

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: JOHNSON & JOHNSON
TALCUM POWDER PRODUCTS
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION**

MDL NO. 3:16-md-2738-FLW-LHG

**JUDGE FREDA L. WOLFSON
MAG. JUDGE LOIS H. GOODMAN**

THIS DOCUMENT RELATES TO:

Civil Action No. 3:18-cv-03102-FLW-LHG

***ALMA BROWDER v. JOHNSON &
JOHNSON, et al.***

FIRST AMENDED SHORT FORM COMPLAINT AND JURY DEMAND

The Plaintiff(s) named below file(s) this *Short Form Complaint and Demand for Jury Trial* against Defendants named below by and through the undersigned counsel. Plaintiff(s) incorporate(s) by reference the allegations contained in *Plaintiffs' Master Long Form Complaint* in *In re: Talcum Powder Products Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2738 in the United States District Court for the District of New Jersey. Plaintiff(s) file(s) this Short Form Complaint as permitted by Case Management Order No. 1 of this Court.

In addition to those causes of action contained in *Plaintiffs' Master Long Form Complaint*, where certain claims require specific pleadings and/or amendments, Plaintiff(s) shall add and include them herein.

IDENTIFICATION OF PARTIES

Identification of Plaintiff(s)

1. Name of individual injured due to the use of talcum powder product(s):
Alma Dianne Browder.
2. At the time of the filing of the specific case, Plaintiff(s) is/are a citizen of
Riverside, Ohio.
3. Consortium Claim(s): The following individual(s) allege damages for loss of consortium: N/A.
4. Survival and/or Wrongful Death Claims: John Edward Bratton.
Name and residence of Decedent Plaintiff when she suffered the talcum powder product(s) related death: Riverside, Ohio.
5. Plaintiff/Decedent was born on February 25, 1949, and died on March 28, 2019.
6. Plaintiff is filing this case in a representative capacity as the Executor of the Estate of Alma D. Browder, having been duly appointed by the Probate Court of Montgomery County, Ohio, on April 22, 2019.
7. As a result of using talcum powder products, Plaintiff/Decedent suffered personal and economic injur(ies) that are alleged to have been caused by the use of the products identified in Paragraph 16 below, but not limited to, the following:

X _____ injury to herself

X _____ injury to the person represented

X _____ wrongful death

X _____ survivorship action

X _____ economic loss

_____ loss of services

X _____ loss of consortium

_____ other: _____

Identification of Defendants

8. Plaintiff(s)/Decedent Plaintiff(s) is/are suing the following Defendant(s) (please check all that apply)¹:

- ✓ Johnson & Johnson
- ✓ Johnson & Johnson Consumer Inc.

Imerys Talc America, Inc. (“Imerys Talc”) was named as a Defendant in Plaintiff’s initial complaint previously filed on March 2, 2018. In accordance with the Stay Order issued in the Imerys bankruptcy filed February 13, 2019, in the United States Bankruptcy Court for the District of Delaware, Plaintiff’s Amended Complaint is not intended in any way to act as a commencement or continuation of the action as against Imerys Talc America, Inc. as a Defendant, nor is it intended to dismiss, abandon, amend, modify or withdraw any claims or allegations made against Imerys Talc America, Inc. as a Defendant. Plaintiff reserves the right to seek leave to amend upon the lifting of the Stay or other action by the Bankruptcy Court permitting continuation of Plaintiff’s action against Imerys.

- ☐ Personal Care Products Council (“PCPC”)

Additional Defendants:

- ☐ Other(s) Defendant(s) (please specify): _____

¹ If additional Counts and/or Counts directed to other Defendants are alleged by the specific Plaintiff(s) as to whom this *Short Form Complaint* applies, the specific facts supporting these allegations must be pleaded by the Plaintiff(s) in a manner complying with the requirements of the Federal Rules of Civil Procedure, and the Defendants against whom they are alleged must be specifically identified on a separate sheet of paper attached to this *Short Form Complaint*.

JURISDICTION & VENUE

Jurisdiction:

9. Jurisdiction in this Short Form Complaint is based on:

☒ Diversity of Citizenship

☐ Other (The basis of any additional ground for jurisdiction must be pled in sufficient detail as required by the applicable Federal Rules of Civil Procedure). _____

Venue:

10. District Court(s) and Division (if any) in which venue was proper where you might have otherwise filed this Short Form Complaint absent the direct filing Order entered by this Court and to where remand could be ordered by the Judicial Panel for trial:

United States District Court for the Southern District of Ohio

CASE SPECIFIC FACTS

11. Plaintiff(s) currently reside(s) in (City, State):

Riverside, Ohio.

12. At the time of the Decedent's diagnosis with a talcumpowder product(s) injury, Plaintiff/Decedent resided in (City, State):

Dayton, Ohio.

13. The Plaintiff/Decedent was diagnosed with a talcum powder product(s) injury in (City/State): Dayton, Ohio, in 2016.

14. To the best of Plaintiff's knowledge, Plaintiff/Decedent began using talcum powder product(s) on or about the following date: 1967 and continued the use of talcum powder product(s) through about the following date: April 2016.

15. The Plaintiff/Decedent purchased talcum powder product(s) in the following (State(s)): Ohio.

16. Plaintiff/Decedent used the following talcum powder products:

- ☒ Johnson & Johnson's Baby Powder
- ☐ Shower to Shower

CAUSES OF ACTION

17. Plaintiff(s) hereby adopt(s) and incorporate(s) by reference the *Master Long Form Complaint and Jury Demand* as if fully set forth herein.

18. The following claims and allegations asserted in the *Master Long Form Complaint and Jury Demand* are herein adopted by reference by Plaintiff(s):

Count I: Products Liability – Strict Liability – Failure to Warn (Against Imerys Talc). Imerys was named as a Defendant in Plaintiff's initial complaint previously filed on March 2, 2018. In accordance with the Stay Order issued in the Imerys bankruptcy filed February 13, 2019, in the United States Bankruptcy Court for the District of Delaware, Plaintiff's Amended Complaint is not intended in any way to act as a commencement or continuation of the action as against Imerys Talc America, Inc. as a Defendant, nor is it intended to dismiss, abandon, amend, modify or withdraw any claims or allegations made against Imerys Talc America, Inc. as a Defendant. Plaintiff reserves the right to seek leave to amend upon the lifting of the Stay or other action by the Bankruptcy Court permitting continuation of Plaintiff's action against Imerys.

- ☒ Count II: Products Liability – Strict Liability – Failure to Warn (Against the Johnson & Johnson Defendants)

Count III: Products Liability – Strict Liability – Defective Manufacturer and Design (Against Imerys Talc). Imerys was named as a Defendant in Plaintiff's initial complaint previously filed on March 2, 2018. In accordance with the Stay Order issued in the Imerys bankruptcy filed February 13, 2019, in the United

States Bankruptcy Court for the District of Delaware, Plaintiff's Amended Complaint is not intended in any way to act as a commencement or continuation of the action as against Imerys Talc America, Inc. as a Defendant, nor is it intended to dismiss, abandon, amend, modify or withdraw any claims or allegations made against Imerys Talc America, Inc. as a Defendant. Plaintiff reserves the right to seek leave to amend upon the lifting of the Stay or other action by the Bankruptcy Court permitting continuation of Plaintiff's action against Imerys.

- ✓ Count IV: Products Liability – Strict Liability – Defective Manufacturer and Design (Against the Johnson & Johnson Defendants)
- ✓ Count V: Breach of Express Warranties (Against the Johnson & Johnson Defendants)
- ✓ Count VI: Breach of Implied Warranty of Merchantability (Against the Johnson & Johnson Defendants)
- ✓ Count VII: Breach of Implied Warranty of Fitness for a Particular Purpose (Against the Johnson & Johnson Defendants)

Count VIII: Negligence (Against Imerys Talc). Imerys was named as a Defendant in Plaintiff's initial complaint previously filed on March 2, 2018. In accordance with the Stay Order issued in the Imerys bankruptcy filed February 13, 2019, in the United States Bankruptcy Court for the District of Delaware, Plaintiff's Amended Complaint is not intended in any way to act as a commencement or continuation of the action as against Imerys Talc America, Inc. as a Defendant, nor is it intended to dismiss, abandon, amend, modify or withdraw any claims or allegations made against Imerys Talc America, Inc. as a Defendant. Plaintiff reserves the right to seek leave to amend upon the lifting of the Stay or other action by the Bankruptcy Court permitting continuation of Plaintiff's action against Imerys.

- ✓ Count IX: Negligence (Against the Johnson & Johnson Defendants)
- ☐ Count X: Negligence (Against PCPC)
- ✓ Count XI: Negligent Misrepresentation (Against the Johnson & Johnson Defendants)
- ✓ Count XII: Fraud (Against the Johnson & Johnson Defendants)
- ☐ Count XIII: Fraud (Against PCPC)

- ✓ Count XIV: Violation of State Consumer Protection Laws of the State of Ohio (Against the Johnson & Johnson Defendants)

Count XV: Fraudulent Concealment (Against Imerys Talc). Imerys was named as a Defendant in Plaintiff's initial complaint previously filed on March 2, 2018. In accordance with the Stay Order issued in the Imerys bankruptcy filed February 13, 2019, in the United States Bankruptcy Court for the District of Delaware, Plaintiff's Amended Complaint is not intended in any way to act as a commencement or continuation of the action as against Imerys Talc America, Inc. as a Defendant, nor is it intended to dismiss, abandon, amend, modify or withdraw any claims or allegations made against Imerys Talc America, Inc. as a Defendant. Plaintiff reserves the right to seek leave to amend upon the lifting of the Stay or other action by the Bankruptcy Court permitting continuation of Plaintiff's action against Imerys.

- ✓ Count XVI: Fraudulent Concealment (Against the Johnson & Johnson Defendants)
- ☐ Count XVII: Fraudulent Concealment (Against PCPC)
- ✓ Count XVIII: Civil Conspiracy (Against All Defendants)
- ✓ Count XIX: Loss of Consortium (Against All Defendants)
- ✓ Count XX: Punitive Damages (Against All Defendants)
- ✓ Count XXI: Discovery Rule and Tolling (Against All Defendants)
- ✓ Count XXII: Wrongful Death (Against All Defendants)
- ✓ Count XXIII: Survival Action (Against All Defendants)
- ☐ Furthermore, Plaintiff(s) assert(s) the following additional theories and/or State Causes of Action against Defendant(s) identified in Paragraph nine (9) above. If Plaintiff(s) includes additional theories of recovery, to the extent they require specificity in pleadings, the specific facts and allegations supporting these theories must be pled by Plaintiff(s) in a manner complying with the requirements of the Federal Rules of Civil Procedure. _____.

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants of compensatory damages, punitive damages, interest, costs of suit, and such further relief as the Court deems equitable and just, and as set forth in the Master Long Form Complaint as appropriate.

JURY DEMAND

Plaintiff(s) hereby demand a trial by jury as to all claims in this action.

DATED: October 16, 2020

Respectfully Submitted,

KIESEL LAW LLP

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, a copy of the foregoing FIRST AMENDED SHORT FORM COMPLAINT AND JURY DEMAND was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Melanie Meneses Palmer
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